



POLICE DEPARTMENT CITY OF NEW YORK

October 24, 2016

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Timothy Cecchini
Tax Registry No. 943068
75 Precinct
Disciplinary Case No. 2014-12771

Charges and Specifications:

- I. Said Sergeant Timothy Cecchini, on or about August 16, 2013, at approximately 0925 hours, while assigned to the 75th Precinct and on duty in the vicinity of [REDACTED], Kings County, wrongfully used force in that he stomped his foot numerous times on Person A.

P.G.203-11 - USE OF FORCE

Appearances:

For CCRB-APU: Simone Manigo, Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, New York 10007

For the Respondent: John D'Alessandro, Esq.
The Quinn Law Firm
Crosswest Office Center
399 Knollwood Road – Suite 220
White Plains, NY 10603

Hearing Dates:

July 27 and July 28, 2016

Decision:

Not Guilty

Trial Commissioner:

ADCT Nancy R. Ryan

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on July 27 and July 28, 2016. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. CCRB called Laila Patino and Sergeant Dhenup Chadotsang as witnesses. Transcripts and audio tapes of CCRB interviews with Person A and Person B were admitted into evidence. Respondent called Detective Leonardo Pino, Police Office Gregory Garraputa, Police Officer John Diaz and Sergeant William Tergesen as witnesses and also testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Not Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

It is undisputed that on August 16, 2013, at approximately 9:00 a.m., Respondent, who was in uniform and was the patrol supervisor in the 75 precinct at the time, responded to an assault in progress call at [REDACTED], a men's shelter for individuals with mental illness, located at [REDACTED] in the Brooklyn. Officers Garraputa and Reichenbach were the first officers to arrive at the scene with Respondent and his driver, Officer Diaz, arriving shortly after. In the shelter lobby, the officers spoke briefly with the complaining witness who identified Person A as the aggressor. Shortly thereafter, Person A entered the lobby of the shelter through a double door. Respondent and his driver, Officer Diaz, immediately approached and attempted to frisk him. (Tr. 24, 29, 156, 204-05)

Person A initially backed up toward a wall but soon resisted Respondent's effort to frisk, using his hand to shove him back. A struggle ensued and quickly escalated between multiple

officers who were now on the scene and Person A. Initially, the officers were able to take him to the ground but he quickly got back up even with several officers on his back. Respondent used his Taser; other officers began discharging pepper spray and using their expandable batons (ASPs). None of these tactics proved successful in subduing Person A who continued to resist being handcuffed. Person A threw a plastic bowl, a stapler and a fan and attempted to push multiple officers back with his hands. (Tr. 157-63, 179-81, 205-11; CCRB Exhibit ("CCRBX") 1)

Ultimately, the officers were able to once again get Person A to the ground. Person A again tried to get up and Respondent used his foot and stepped several times in the area of Person A's head and neck and upper back. Seconds later, other officers moved Respondent back and then handcuffed Person A. Security camera footage from the shelter, entered into evidence by the CCRB (CCRBX 1), depicts the following:

- 8:52:10 - 8:52:41- Two uniformed officers enter the lobby followed by Respondent. Respondent walks over toward a set of double doors. Person A appears in the double doorway. Respondent and his partner approach.
- 8:52:43-8:52:47- Person A steps back against the door with his hands up. Respondent begins frisking Person A's waist area as two other officers hold each of his arms.
- 8:52:49-8:53:18- Person A shoves Respondent back. Six officers, including Respondent, begin to struggle with Person A. Person A goes to the ground and four officers go down with him. They continue to wrestle and struggle with him.
- 8:53:20-8:53:36- Person A is able to get back up. As the officers attempt to pull him back down, he shakes them off and breaks free, ultimately standing up.
- 8:53:33-8:53:45 Respondent attempts to discharge his Taser and appears at one point to stun himself. Person A pulls at his shirt, appearing to remove the Taser, seemingly unaffected.
- 8:53:46- 8:53:57- Reichenbach discharges his pepper spray. Person A turns his back to shield himself and multiple officers are affected. He then moves out of view of the camera. Multiple officers follow. Respondent exits the lobby.
- 8:54:01-8:54:14- Person A reappears as he swings at an officer. It is clear that he has one handcuff on as he is swinging the arm with the cuff. At 8:54:03, Respondent

reenters the lobby. Two officers use their ASPs and strike Person A multiple times. He continues to swing, nearly shoving officers to the ground. A male, who works at the shelter, tries to get through to Person A, touching his arm. Person A reaches for what appears to be a bowl and throws it at one of the officers.

- 8:54:14-8:54:19- Respondent again unsuccessfully attempts to use his Taser at close range. He then attempts to take Person A to the ground from behind but Person A shoves him back.
- 8:54:20-8:54:30- Respondent again places his hands on Person A, as do some of the other officers. The struggle continues mostly out of the view of the camera.
- 8:54:31-8:55:20- The officers get Person A stomach down on the ground with at least 6 officers on or leaning over him. They continue struggling to cuff his hands. From 8:55:01-8:55:20, multiple officers strike Person A with their ASPs. At 8:55:05, Respondent is struck. During this time, more officers arrive.
- 8:55:20- Respondent removes himself from the pile and, limping, repositions, standing near Person A's head/upper body area. He steadies himself on the nearby metal detector/scanner.
- 8:55:21-8:55:33- Person A begins to push his head up and attempts to grab onto the scanner. Immediately, Respondent uses his foot and presses down on Person A 8 times over the course of 4 to 5 seconds. It is impossible to discern whether the foot made contact with the head, neck, or shoulder area. Person A grows still. At 8:55:28, three of the officers surrounding Person A grab Respondent and push him back. A limping Respondent then exits the front door.
- 8:55:37-8:55:54- An officer takes out his handcuffs and reaches down toward Person A and, for the next several seconds, the officers work to put the cuffs on.
- 8:55:54-8:56:30- Respondent reenters and speaks with two other officers.
- 8:57:10- A group of officers sit Person A up. There is a significant amount of blood where his head had been.
- 8:59:20-8:59:35- Respondent reenters the lobby and appears to say something to the four officers near Person A. Those officers then carry Person A out of the lobby.

Though multiple officers used various forms of force during this incident, the only conduct charged by CCRB as wrongful was Respondent's allegedly stomping his foot on Person A.

Respondent maintains that he used foot stuns, a tactic he learned at the Police Academy, to temporarily stun Person A so other officers could get control of his hands and cuff him.

CCRB offered into evidence two interviews with Person A and an interview with Person B, the shelter director. In addition to these out-of-court statements, Laila Patino, a shelter employee, and Sergeant Dhendup Chadotsang were called as witnesses.

Person A was interviewed by IAB immediately following the incident and then spoke with CCRB investigators a month later.¹ During the first conversation, Person A explained that an altercation started with other residents at the shelter and that he had tried to intervene and ended up getting struck in his left eye. (CCRB 2C [1] at 2-4) When moments later, Person A walked into the lobby after using the bathroom, he alleged that a blonde, light-skinned officer grabbed him by the shoulders and, without saying anything or directing him to put his hands up, "slammed" him against the front door. (*Id.* at 5-6) He alleged that a second Hispanic officer then "slammed him to the ground" but he "pushed up" quickly, and the blonde officer called him a monkey. The officers told him to get back on the ground but before he could do so, other officers ran behind him and hit him with their "nightsticks" in his head, arms and legs. (*Id.* at 9) Person A asserted that he stood up again "because [he] was in pain," was searched by the officer who had first approached and was then shot in the back with "a stun gun" by another officer. He was unsure which officer had shot the Taser. At that point, he realized there was blood running down his head. He stated that the staples in his head and a cut by his eye were the result of his being hit with the nightstick. (*Id.* at 10-15)

Person A told the IAB officers that he then tried to get into the house manager's office but was sprayed in the eyes with pepper spray as he attempted to do so. At this point, he knelt on

¹ The CCRB put the transcripts of both interviews with Person A into evidence as Exhibit 2C. For clarity, the August 16, 2013 interview will be cited as CCRBX 2C [1] and the September 11, 2013 interview as CCRBX 2C [2].

the ground and said, "I'm finished, I'm done, I will behave myself," but the officers "kep[t] beating [him.]" He alleged that even when he was laying on the ground, officers were "still standing" on his back and that the officer who initially grabbed him stomped on his head. (CCRB 2C [1] at 8, 10, 19) He stated that they "shackled" and handcuffed him and that when he expressed that the handcuffs hurt, "they" told him "we don't care." He also alleged that, in the ambulance, the officers refused to raise his head up to an oxygen mask. (*Id.* at 19-21)

Person A insisted that he had not been resisting during the incident and that he was simply trying to explain the situation to the officers and asking to be treated "like a human being." (*Id.* at 18, 23, 29) He maintained that the officers never gave him directions or instructed him to stop resisting, lamenting "they was just beating on me." (*Id.* at 25-26, 31) However, he later stated he was told to stay down when he was trying to get up for the last time before he was handcuffed.

Person A was again interviewed a month later by CCRB investigators where he provided some new and different details. At this interview, he contended that he approached the officers and put his hands up without being directed to do so but was pushed into a wall and taunted by a white officer who said, "Animal get up on the wall, I'm going to search you. You monkey. I remember you from last time." (CCRB 2C [2] at 4, 18-21) He noted that this officer had responded to the shelter previously when he had a seizure. (*Id.* at 11-13) As he put his hand down and turned to ask the officer why he was using racial slurs, three other officers began "abusing him" with nightsticks. (*Id.* at 20-25). He said he felt the nightstick hit him in the back of the head, which he believed caused him to require eight staples to the back of his head.

He denied using any force against or provoking the officers in any way up to this point though he later conceded he might have "swung" at them as he attempted to turn around. He further denied kicking, punching or attempting to punch the officers at any point. (*Id.* at 27, 42-

45) He also acknowledged that when he was hit with a Taser in the back, he pushed the officers off him so he would not be shot again. (*Id.* at 27-28). After he was tased, he tried to flee into an office but was unable to get all the way in. He alleged that three officers continued to beat him with the nightstick, hitting his head at least three times and causing him to bleed. (*Id.* at 30-36) He contended it was due to those blows that he required five stitches near his right eye.

After the officers discharged their pepper spray, he admitted getting aggravated and throwing a stapler and a fan at the officers. He recalled that as he was being pepper sprayed, a maintenance worker at the shelter, [REDACTED], came out from an office and hugged him, telling him to stop and let the officers arrest him. He said he voluntarily got to his knees, putting his hands behind his head but officers piled on top of him. (CCRB 2C [2] at 36-41) After he was cuffed, "they took me out to the front of the building...and I was laying down there, that's when the officer continually jumped [on his head and the upper part of his back near his neck] because there's footage of that." (*Id.* at 46-57) He remembered hearing another officer say, "[t]hat's enough, get off, you could kill him." However, when asked if he had injuries to his head or neck from the officer standing on him, he responded, "Well no, no injuries." (*Id.* at 56-57)

CCRB also spoke with Person B, a program director at the shelter, who had observed the video prior to his interview. On the morning in question, he recalled a staff member calling him and reporting, "police officers were beating on one of our clients." When he looked into the lobby through a door window, he observed six officers using pepper spray, Tasers and "billy clubbing" Person A hitting him at least once in the head and causing him to bleed "profusely." (CCRBX 3B at 3-5, 10-11, 16, 22) He did not hear officers giving Person A directions or instructions. He agreed that Person A was not affected by the Tasers but said that it was apparent that his eyes were affected by the pepper spray. He confirmed Person A's statement that he tried to

get into the house manager's office and that he got halfway in and threw a stapler. He further recalled that the officers were having a "very hard" time with Person A and that he was shoving and "tossing them" to the ground and was able with just one arm to "get them down." Person B noted the officers could not get Person A down until one of the shelter's maintenance workers, [REDACTED], assisted by grabbing his legs. (*Id.* at 20-21, 26-28, 34-35, 38-40, 45-48, 52-53)

Person B asserted, "[o]nce they got him down, they continued to assault him." He admitted his vantage point was somewhat obscured by a metal detector but stated, "you could tell they were stomping [on Person A] ... you know ... I would assume they were stomping, I saw their legs going up ... but I couldn't see ... I saw the movement like if they were kicking but I did not see the kicks." (*Id.* at 15-16) Specifically, he alleged a white bald officer was the one stomping and suggested he made the stomping motion four to six times before he was pushed back by another officer. (*Id.* at 24, 28-29) He believed Person A was handcuffed at this point because he recalled hearing another officer state he was handcuffed and Person A laying still. After that, other officers took Person A outside and laid him face down; Person B did not observe any officers using physical force or standing on Person A once he was outside the building. (*Id.* at 30, 50-51)

Laila Patino, the house manager at the shelter, testified at trial. Preliminarily, she noted that she had regular contact with Person A and that the only time police had previously been called to the shelter for Person A was when he had a seizure months before. (Tr. 24-25)

From her office, which is off the lobby area, she noted that the situation unfolded "very, very fast." She remembered that officers approached Person A and began trying to handcuff him without first engaging in any conversation or providing directives. (Tr. 28-30, 44-46) Patino heard Person A say repeatedly that he did not want to be handcuffed and perceived that he put his arms up to try to avoid the cuffs. At this point, she testified that "more officers" approached and

tried to take him down but "they all went down like a domino." She stated she was "not sure if any officers were squashed at that time . . . or if Person A ended up on the floor first." (Tr. 30-32, 46-48) She described the scene as a "wrestling match." (Tr. 50)

She further stated that after the lengthy struggle, Person A was belly down on the ground, saying, "I give, I give" and asking for his service coordinator. Patino believed he had "given up" and did not want to "continue on his plight of resistance" Officers continued to try to subdue him and had "kind of handcuffed him" when an officer with a gold badge [Respondent] "just came around and with his right leg and his hands on the top of the table, pounced on Person A right on his head." She agreed with CCRB counsel's description that Respondent jumped up and down, landing his right foot onto Person A's head. She said two officers "physically kind of pulled" Respondent back. At that point, other officers were able to "kind of handcuff Person A" and when they sat him up, she could see a pool of blood where Person A's head had been. (Tr. 35-43)

On cross examination, Patino watched video of the incident. Though she stated her recollection was that Person A was handcuffed when Respondent, as she described it, "pounced" on his head, after watching the video, she acknowledged she was "mistaken" regarding the handcuffs. She pointed out that the experience had been traumatic. She also acquiesced that she did not know whether the "pool of blood" was the result of the officers striking Person A with batons or Respondent's conduct. (Tr. 63-70)

Sergeant Dhendup Chadotsang, who was also a sergeant in the 75 precinct at the time, was also called by CCRB. He responded to the scene when Respondent called a 10-85 over the radio, seeking backup. Upon his arrival moments later, he noticed a "pungent smell of pepper spray" and saw "a lot" of officers wrestling with Person A. Specifically, he recalled one of the

officers was stuck underneath Person A and was crying out in distress. He joined the group in trying to get Person A's arms but "[Person A] was a strong, strong guy." (Tr. 79-82, 94)

Chadotsang did not see Respondent stomp on Person A's head but acknowledged the video shows him "us[ing] his leg." He did not know if Respondent's foot made contact with Person A's head or shoulder. He testified that he was concerned Person A might hit his head on the scanner near the metal detector so he pushed back Respondent in an effort to "get in there so that I can actually go down, have him cuffed...for his own safety." He agreed on cross examination that Person A was still actively resisting when he pushed Respondent back. (Tr. 89-96)

Like Chadotsang, Respondent and other officers at the scene described a chaotic incident where Person A was vigorously resisting arrest. Officer Gregory Garraputa was first to respond. He recalled that Respondent and his driver soon arrived and "they got to [Person A] at the door and ... and a fight started." It soon became a "massive, massive brawl" and Person A, who was "huge" and "extremely wide," "shook us off him like we were leaves on a tree." (Tr. 155-58) He noted they used "every non-lethal capacity we had," including mace, the Taser and the ASP, all of which "did nothing." (Tr. 158-61) He testified that Person A picked up a box, hit him in the head and then threw a stapler at him, cutting his head. He remembered feeling in fear for his safety as "we exhausted all options and it was just who was going to last the longest." (Tr. 165-66)

On cross examination, when confronted the video, Garraputa agreed with counsel's statement that Person A had collapsed to the ground "before Respondent stomped on his head." (Tr. 167). However, Garraputa was not asked at any point to describe the action Respondent took with his foot. He also confirmed that he could be seen on the video pushing Respondent away from Person A at 8:55:28. He was not asked why he had done so. (Tr. 168)

Police Officer John Diaz was also at the scene, as he was Respondent's driver. He and Respondent decided to frisk Person A immediately as the complainant had indicated he was assaulted with a weapon. As Respondent went to frisk him, Person A "became irate." He recalled Person A as "the biggest individual [he had] ever dealt with during his time on the job." (Tr. 179)

Diaz was able to get one handcuff on Person A, which Person A used as a weapon, swinging it from his wrist. He noted, "[a]t one point he's actually able to stand all of us up. With one handcuff on, he's able to stand up...probably a thousand pounds worth of police officers." He was "bewildered by [Person A's] incredible display of strength." The scene turned into "an absolute melee" with Person A grabbing whatever he could to throw at the officers. (Tr. 180-81, 188)

He recounted that Person A was not subdued by pepper spray, the Taser or the use of the ASPs. He opined, "The Taser had no effect whatsoever . . . which I've never seen anything like that. We used...almost every tool we had available to us to try to subdue the individual." (Tr. 181-82) He explained that all the officers were running out of energy and were not gaining any advantage as the fight wore on. He stated that no other police incident during his career compared to this one and that he had been in fear for his life. (Tr. 185-86)

Observing the video on cross examination, he characterized Respondent's actions as "using his foot to try to hold Person A down from standing back up again continuing to fight," and insisted that Respondent did not kick Person A in the head. He agreed that he put his hands on Respondent after he used his foot because Respondent's positioning made it impossible to quickly access Person A's hands to rear cuff them. He asserted, however, that Respondent's actions "effectively end[ed] the threat because he prevented Person A from getting back up." (Tr. 184-85, 189-90)

Sergeant William Tergesen responded to the scene after Respondent called a 10-85 for backup. Upon arriving at the location, he was immediately "hit with a blast of OC spray" and observed several officers actively engaged in a fight with a large and "very angry" individual. Multiple officers appeared to be out of breath. Tergesen joined them, trying to pull Person A's arms out from under him, and stop him from standing up. (Tr. 196-98) He recalled there was blood all over the ground and his own hand became covered in blood as he tried to pull Person A's arms. (Tr. 200) He characterized the scene as "the most chaotic" he had ever been involved in terms of the size of the individual and the number of officers needed to subdue him.

After observing the video, he pointed out that Person A made a final attempt to stand but Respondent "gave him a foot stun," thereby gaining compliance. (Tr. 199-200) On cross examination, he stated that he was unable to see if Respondent's foot made contact with Person A's head. He further contended that Respondent did not kick Person A. (Tr. 202) Finally, he confirmed that Person A's blood was everywhere "way before" Person A was handcuffed. (Tr. 200)

Respondent's testimony provided a sequence of events similar to the other officers. Upon arrival, he asked Person A to put his hands up and stand against the wall for a frisk. Person A complied initially but when Respondent felt a hard object in his pocket, he said "he wasn't going down like that." At this point, Respondent realized it was a potentially "tumultuous situation" and decided to handcuff Person A. As Respondent attempted to do so, Person A grabbed Respondent's head and pushed Respondent away. (Tr. 204-06) As the situation became more chaotic with multiple officers unable to subdue Person A, Respondent explained that he decided to "escalate the use of force" by discharging his Taser but explained he was standing too close to Person A for it to be effective. He noted that because he was "so caught up in the moment," he kept his hand on the trigger and shocked himself. (Tr. 207-08)

After another officer discharged pepper spray, Person A turned his back to shield himself. Respondent approached and Person A pushed him back, getting pepper spray on Respondent's face. Recognizing the need for more assistance, Respondent stepped outside for air and called for an additional unit and Emergency Services. When he returned, Person A was "very irate" and Respondent felt he was no longer merely resisting but actively fighting the officers. (Tr. 209-10) The officers attempted to tackle him but he threw a fan and sought to access an office. Respondent instructed the individuals in the office to keep the door closed "because the dangers would have exponentially risen [if Person A had] access to . . . letter openers, scissors" The officers again attempted to take Person A to the ground. Respondent recalled that Person A continued to fight, "becoming further and further irate as we became further and further fatigued." (Tr. 211)

With the assistance of more officers who had arrived at the scene, they got Person A to the ground and continued to deploy ASP strikes to attempt to gain his compliance. Respondent noted he held Person A's legs and another officer inadvertently struck him with the ASP and started to perform an ankle lock, not realizing he had Respondent's leg. (Tr. 212) As Respondent backed away from the pile-up in pain, he realized "the situation is becoming exponentially out of control because the officers . . . are either injured, gasping for air . . . not actively trying to cuff the suspect." Respondent saw Person A attempting to get up again and realized that if Person A succeeded, "we're going to lose this fight." Believing "this had to end at that moment, Respondent testified he reverted to his training and began to employ foot stuns to Person A's shoulder and neck areas. Respondent was limping and feeling somewhat disoriented at this point but grabbed onto the nearby metal detector for balance and then did his best to temporarily stun Person A in the neck and shoulder areas so the officers could remove his arm that was clenched under his chest and cuff him. (Tr. 232, 237-38) He acquiesced that at one point his foot slipped due to the OC spray and

perspiration that had accumulated on Person A. (Tr. 231) He explained that in using this tactic, he was aiming to avoid deadly physical force. (Tr. 228) Respondent remembered Person A stating, "I'm giving up," and other officers soon cuffing him without further incident. (Tr. 212-14)

He stated that when the other officers knew they had control and would be able to get Person A's hands, they pushed him back in order to cuff Person A. (Tr. 224, 243-44) He trusted his officers when they said they had control and stepped outside briefly. (Tr. 243-45) Respondent summarized the event, testifying, "I was in fear for my life that day, my officer's lives that day. I've never experienced anything like that in my career... We were losing the fight." (Tr. 230)

Respondent testified on cross examination that Person A was bleeding prior to the foot stuns. (Tr. 231) He agreed that he stunned Person A more than three times with his foot, but insisted he did not "kick" him. (Tr. 240-42)

In addition to the officers who were present at the scene, Respondent also called Detective Leonardo Pino, who has served as the curriculum coordinator, safety service coordinator and instructor trainer at the Police Academy since 2004. Prior to that assignment, he instructed recruits beginning in 1992. He is certified by the State of New York and the FBI as a defense tactics instructor and teaches defenses tactics as an adjunct at John Jay College. He estimated that he has testified as an expert at least five times in New York courts. As such, he was deemed an expert in the area of defensive tactics and use of force. (Tr. 99-103)

Pino explained the "escalation of force," a continuum in which new recruits are trained. Officers are taught to always initially try to obtain compliance verbally. If that fails, an officer should "keep going up the escalation of force" and use "unarmed physical defense" such as an arm-bar or "take-down." Next in the continuum is the use of mace, followed by Tasers. If those

prove ineffective, an officer should move to using "impact weapons," which Pino defined as the expandable baton. Finally, the "last resort would be deadly physical force." (Tr. 103-06)

Pino confirmed that the Department teaches officers specific striking and kicking techniques, which he stated now fall under "impact weapons," but were considered the lesser "unarmed physical defense" in 2007 when Respondent was trained. There is a lesson exclusively on kicking where officers are taught ways to strike "vulnerable" areas of the body.² (Tr. 107-08) He explained that "nerve endings" in certain areas of the body "stun" an individual when they are struck, making it easier for officers to safely "go in there and grab the areas or cuff them." (Tr. 110-11) Pino specified that a strike to the back of the shoulder or neck would stun an individual in their arms and possibly legs, causing them to relax for a second, giving officers the opportunity to handcuff them. (Tr. 112-15)

He agreed on cross examination that officers should not cause unnecessary injury and should cease using a particular tactic if it is not working, though he pointed out it might take multiple tries to work. He further explained that officers are not expected to pinpoint specific areas to strike as it can be difficult to precisely strike the intended target. Instead, he explained officers target a general area, a concept he described as a "forgiven principle." (Tr. 128-33, 140-42, 149)

Pino was shown the video during trial and characterized Respondent as "performing basically a strike to . . . the back of [Person A's] neck." (Tr. 119) He noted this tactic was consistent with current training and was taught when Respondent was trained at the Academy. He further explained, "when somebody is resisting . . . we want the individual to be on the ground, flat. That to us is our safest way . . ." (Tr. 119-27)

² Pino noted the only entirely prohibited area is the throat.

Pino, watching the video, explained Respondent was attempting to get Person A to the ground so he could cuff him when the foot strikes occurred. He did not agree that Respondent "stomped" on Person A's head, positing that Respondent struck Person A with his foot "more towards the shoulder, toward the back of the neck." (Tr. 134-36) He later specified that Respondent was striking or pressing down on the back of Person A's neck and pushing him down. (Tr. 143) Pino described Person A as posting at 8:55:20, a position where an individual is still partially up that makes it "really hard" to get the individual flat to the ground and requires extra force. (Tr. 146- 47) He also noted that Person A had one cuff on him, which could have been used as a weapon.

Though the incident was recounted at length at trial by multiple witnesses, the only question before this tribunal is whether Respondent acted wrongfully during the 4 to 5 second span where he used his foot to press down on or strike Person A. Patrol Guide Section 203-11 sets forth the standard to be followed when force is necessary to achieve legitimate police goals. It mandates that members of the service "at the scene of a police incident" use the "minimum necessary force," and cautions that "excessive force will not be tolerated." Additionally, whenever it becomes "necessary to take a violent or resisting subject into custody," officers should "utilize appropriate tactics in a coordinated effort to overcome resistance." Having carefully considered all evidence and testimony, I find that Respondent complied with the Patrol Guide's mandate to use minimum necessary force at all times while trying to apprehend Person A.

The alleged tactical violation occurred within the reality of a rapidly evolving and volatile situation. Person A was a potentially dangerous suspect of very large stature who refused to be frisked and exerted extreme resistance to avoid arrest. Not only did he refuse to surrender his hands, he actively fought multiple officers at once, swung at them with his one hand that was cuffed, and threw whatever items he could reach, in addition to trying to access an office where

civilians were located. Security concerns were further heightened by the fact that this incident occurred at a residential shelter that was “for men with mental illness.” Given these circumstances, it cannot be questioned that force was necessary and, regrettably due to Person A’s vehement resistance, that the “minimum” force necessary to get Person A into police custody was a significant continuum of force.

The transcripts of Person A’s two interviews raise more questions than they provide answers. Though hearsay is admissible in this forum, it is difficult to discern from Person A’s statements what is true and what is embellished or simply false without the benefit of cross-examination. Particularly problematic is the fact that at his first interview, he told IAB that an officer “stomped” on him just after he was sprayed with pepper spray and was trying to access an office, whereas at his subsequent CCRB interview, he stated that the officer “jumped” on him after he had been handcuffed and brought outside to the front of the building, which directly contradicts shelter director Person B’s statements to CCRB. Person A’s insistence at both interviews that he was not resisting or fighting the officers, but simply trying to explain himself, further calls into question the reliability of his narratives as the video shows him resisting fervently from very early in the encounter. His assertion that the officers did not say anything to him at the outset of the encounter, not even simply directing him to put his hands up, is also quite suspect.

There are similar reliability questions with Person B’s hearsay account as he asserts that a bald officer was the one to stomp or step on Person A. Respondent could not be described as bald and this allegation is contradicted by the video, perhaps an indicator of the obscured view that Person B and other shelter workers had of the incident, as they were not in the lobby. While I believe the shelter manager, Ms. Patino tried in earnest to recount what she observed, she seemed somewhat protective of Person A, which is perhaps understandable due to her

position. More significantly, on cross examination, she admitted she was mistaken about Person A being handcuffed when Respondent employed the foot strikes. Further questions are raised about her recollection, given her admission that she was "traumatized" by the events and that she was not in the lobby but watching the commotion, which she stated unfolded "very fast," through an office door window. Finally, though she believed Respondent's actions were "excessive," nothing in her testimony, where she agreed Person A was resisting and described the scene as a "wrestling match," alters the impression left by the video where Person A resists vehemently and tries to break away from the officers at every opportunity.

Conversely, I found Respondent's testimony, and that of the other officers at the scene, to be straightforward, candid and logical regarding the various measures of force first utilized in their efforts to apprehend Person A. Having watched the video, their assertions that they feared for their safety and that this was one of the direst situations of their careers are wholly believable.

Counsel for CCRB characterizes Respondent's actions as the gratuitous stomping and kicking of an enraged officer who had lost control, so much so that he had to be restrained by multiple other officers as he continued to kick or stomp "long past the point where it could have been an effective defensive tactic."³ Neither the video nor any of the testimony corroborates this. If anything, the video debunks CCRB's contentions. The foot stuns occur in extremely rapid succession (totaling four to five seconds) a second after Person A lifts his head and begins

³ It should be noted that if Respondent truly "lost control" and went on the "foot stomping offensive" described in summation, it seems Person A would have some injuries, perhaps even serious ones. (Tr. 262, 266) Person A himself says he had "no injuries" from what he described as Respondent standing and jumping on his back. (CCRBX 2C [2] at 56-57) Though there is a visible pool of blood where his head was after he was cuffed, Person A himself and others at the scene stated that he was bleeding early on in the altercation after he was struck with the ASP. (CCRB 2C [1] at 13-14; CCRB 3B at 22; Tr. 171, 197-200, 231) Person A attributed those strikes to his needing several staples in the back of his head. (CCRB 2C [1] at 14; CCRB 2C [2] at 23-25) The medical records in evidence make no reference to the patient indicating his head or neck was "stomped" or "jumped" on; they are simply an order to return for staple removal, a medication list (bacitracin and Tylenol) and a general information sheet on head injuries. The information sheet states: "You have had a head injury that does not appear serious at this time." (CCRBX 4) In sum, there are no injuries that are directly attributed to the charged misconduct.

attempting to pull himself up on the metal detector. This is hardly the case of an unhinged officer taking his frustrations out at length on a prisoner without justification. In reality, the video is consistent with exactly what Respondent testified to--that Person A was beginning to rise up again, that the officers wrestling with him were incredibly fatigued at the point Respondent acted to neutralize the very real threat of Person A's standing up again by employing a series of foot stuns until Person A ceased moving. Further, Respondent does not appear unhinged or angry on the video; he simply appears to be trying to end what had been a lengthy and difficult apprehension of a strong, resisting suspect and doing so in a way that made sense given where he was positioned relative to Person A and the pile of officers on top of him.

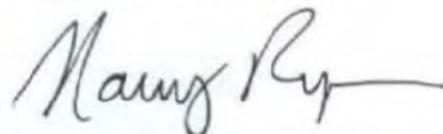
During summation, CCRB's counsel misconstrued both the testimony and the video. It was asserted that "the arrest took place after Respondent walked out of the lobby long after his foot stomping offensive." (Tr. 266) The video plainly shows that Person A grew still immediately and was handcuffed approximately ten to twenty seconds after the final foot stun. Similarly, the officers' testimony as to why Respondent was pushed back after the foot stuns is mischaracterized. (Tr. 266-68) Not one of the officers at the scene indicated that he pushed Respondent because he believed what he was doing was excessive or required intervention. Officer Diaz plainly testified, "I moved [Respondent] out of the way because where his legs were positioned by the individual's arms, it was impossible for us to put [Person A's] hands behind his back." (Tr. 184) CCRB's own witness, Sergeant Chadotsang, simply stated he pushed Respondent because Person A's head was close to the metal detector and he wanted to ensure his safety and "actually go down and have him cuffed;" he did not remotely imply that he pushed Respondent because he believed he was wrongfully injuring Person A or because he felt obligated to intervene. All of this is consistent with Respondent's testimony that he backed off when other

officers indicated they had control of Person A and were in position to cuff him. It is apparent from the video that it would have been impossible to cuff Person A had Respondent not stepped back from standing over him. As such, I do not find the officers' actions in placing their hands on and moving Respondent back to be probative of the fact that he was acting wrongfully.

I also reject CCRB's assertion that Detective Pino's testimony is of little value because he was not at the scene. Pino viewed the video of the altercation that CCRB entered into evidence and commented that, in his view, Respondent used a defensive tactic consistent with the curriculum that Pino develops and trains instructors on at the Police Academy where he has been assigned since 1992. Though not dispositive, his testimony provides illuminating context, especially given Respondent's assertion that he "reverted to [his] training" in using foot stuns.

Finally, I reject CCRB's contention that Respondent's actions were wrongful because the other officers at the scene did not attempt to strike Person A with their feet. All of the officers arrived at different points and were positioned differently relative to Person A, and thereby, the tactics that could be best employed were different as to each officers. It simply does not follow that because other officers did not attempt to use foot stuns or strikes, it was unnecessary and/or wrongful for Respondent to do so. The tribunal's role is to determine whether the tactic actually used was justified under the circumstances. The evidence and testimony in this case overwhelmingly indicate that Respondent was wholly justified in his actions. In a chaotic and disorganized scene where multiple other forms of force had proved ineffective, Respondent, using his foot, applied multiple strikes to a rising Person A. Within several seconds, the situation was, at long last, controlled enough for other officers to cuff him. Accordingly, I find Respondent Not Guilty of wrongfully stomping his foot on Person A.


Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nancy R.", followed by a horizontal line.

Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPROVED

JAN 23 2017

A handwritten signature in blue ink, appearing to read "James P. O'Neill".

JAMES P. O'NEILL
POLICE COMMISSIONER